

### **REMARKS**

After entry of the amendments, claims 1-5, 7-11 and 13-22 are pending in this application. Claims 1, 11 and 13 have been amended. Claim 6 has been cancelled as being redundant in view of amended claim 1 and new claims 21-22 have been added. No new matter is believed to have been introduced by the amendments.

Attached hereto is a marked-up version of the changes made to the claims by the current amendments. The marked up version is captioned "**Version with markings to show changes made**".

#### **Discussion of 35 U.S.C. §112 Rejection**

The amendment to claim 13 obviates this rejection.

Applicant has also amended claims 1 and 11 to state that the claimed spray/article contains no propellant. This amendment is supported on page 3, line 29 of the specification.

#### **Discussion of 35 U.S.C. §103 Rejection Based on Stone in view of Biedermann**

Stone simply teaches a 360 degree pump sprayer. Stone says nothing about anti-acne sprays or salicylic acid.

Biedermann's anti-acne compositions must contain a dehydroacetic acid. Applicant's claims as amended, state either that the anti-acne ingredient(s) consist essentially of salicylic acid or consist of salicylic acid. Applicant believes this terminology excludes the presence of a dehydroacetic acid and distinguishes the claimed subject matter over Biedermann. In other words, a composition that does not contain dehydroacetic acid would not be obvious from Biedermann since Biedermann teaches it as an essential ingredient.

Applicant has previously pointed out that Biedermann does not teach fine mist pump sprays and specifies that its aerosols contain propellant. The claimed spray/article do not contain propellant. Biedermann is totally silent about an expectation of successfully producing any spray

that does not contain a dehydroacetic acid. Indeed applicant teaches that fine mist pump sprays of salicylic acid are preferably maintained at a pH greater than 4.5 to reduce the likelihood of nasal/throat irritation. Biedermann does not appreciate this potential problem and it teaches a pH range that include pHs below 4.5.

For these reasons, applicant contends the combination of Stone and Biedermann does not render the claimed invention obvious.

**Discussion of 35 U.S.C. §103 Rejection Based on Stone and Biedermann in further view of Guang Lin**

This rejection is directed to the dependent claims that specify pH ranges (all of which are above 4.5). The deficiencies of the Stone-Biedermann combination are discussed above. Moreover, rather than making applicant's pH ranges obvious, applicant contends Guang Lin supports their nonobviousness. Guang Lin does not recognize the potential problem of nasal/throat irritation associated with low pH, fine mist sprays of salicylic acid. Indeed, it teaches using a pH range of 2-7. Half of that range is below the lower limit of applicant's range - which is taught to lessen the likelihood of irritation.

**Discussion of Rejection Based on Stone and Biedermann in further view of Sciarra**

This rejection is directed to the dependent claim which specifies dose volume. Applicant believes this rejection is not well taken for the reasons discussed above. In other words, Sciarra does not address any of the deficiencies of the Stone-Biedermann combination.

**Discussion of Rejection Based on the Combination of Arnold and O'Halloran**

Arnold is simply another reference that describes a pump sprayer. As acknowledged in the rejection it says nothing about anti-acne sprays or salicylic acid sprays.

The secondary reference, O'Halloran, describes anti-acne compositions which must contain both a phosphate ester and a  $\beta$ -hydroxy carboxylic acid such as salicylic acid. Applicant's claims, as amended, state either that the anti-acne ingredient(s) consist essentially of salicylic acid or consist of salicylic acid. Applicant believes such terminology excludes the presence of phosphate ester in the claimed formulation and distinguishes the claimed

composition from the O'Halloran composition. Applicant contends that any anti-acne composition that does not contain a phosphate ester is unobvious from O'Halloran because O'Halloran teaches that phosphate esters are essential in its composition.

Applicant also contends that O'Halloran does not suggest applying its compositions as fine mist pump sprays. In this regard, the reference merely lists "aerosols" as one of many possible formulation forms and does not provide any examples of an aerosol formulation. It is applicant's position that O'Halloran is silent about the expectation that an anti-acne composition that does not contain a phosphate ester could be successfully administered as a fine mist pump spray. This is especially so in the case of fine mist pump sprays consisting essentially of salicylic acid because of the potential of causing nasal/throat irritation -- a potential not appreciated by O'Halloran.

For these reasons applicant believes the Arnold-O'Halloran combination does not render the claimed invention obvious.

#### **Discussion of the Rejection Based on Biedermann in view of Rhea**

The deficiencies of the Biedermann reference are discussed above. For the reasons discussed above applicant believes Biedermann combined with any reference that just shows a pump spray dispenser does not make the subject matter of the claims obvious.

Further, the Action says that applicant's previous argument over this rejection was not persuasive because the claims were confusing regarding the definitions of "aerosol" and "fine mist spray". The claim as presently amended state that the spray/article contains no propellant. Applicant hopes that this amendment eliminates any confusion and makes the prior argument persuasive of the patentability of the claims over the Biedermann-Rhea combination.

#### **CONCLUSION**

Applicant believes the above amendments and remarks traverse all the rejections. Applicant accordingly respectfully requests the Examiner to withdraw the rejections and allow the claims as amended.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 425802000200. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**In the Claims:**

Please cancel claim 6

Please amend claim 1, 11, and 13 as follows:

1. (Twice Amended) A fine mist pump spray containing no propellant for treating acne or acneform conditions comprising a solution of anti-acne ingredient(s), said anti-acne ingredient(s) consisting essentially of salicylic acid [solution] wherein the salicylic acid constitutes from about 0.01% to about 20% by weight of the solution.

11. (Twice Amended) An article of manufacture comprising a solution of anti-acne ingredient(s), said anti-acne ingredient(s) consisting essentially of salicylic acid [solution] wherein the salicylic acid constitutes about 0.01% to 20% by weight of the solution and no propellant contained within a fine mist pump spray dispenser.

13. (Twice Amended) The article of claim 11 wherein the fine mist pump spray [pump] dispenser is a 360 degree fine mist pump spray [pump ]dispenser.

Please add new claims 21-22.